



Order 96-8-45

Served: August 29, 1996

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 29th day of August, 1996

Application of

VALUJET AIRLINES, INC.

for a redetermination of its fitness and an exemption from
the 45-day notice requirements of 14 CFR 204.7

Docket OST-96-1548

ORDER TO SHOW CAUSE

Summary

By this order, we tentatively find ValuJet Airlines, Inc. (ValuJet) fit to resume its certificated air carrier operations. In making our tentative determination on the airline's fitness, we have carefully reviewed the airline's experience, management, finances and operating plans. The Federal Aviation Administration (FAA), which has granted ValuJet Part 121 certificate authority, has conducted an intensive review into the carrier's operating and maintenance programs and its safety procedures. The FAA has also obtained ValuJet's commitment that the airline will not expand its fleet above fifteen aircraft without further review and approval by the FAA. On the basis of this commitment and the reviews by the FAA and us, we have tentatively decided that ValuJet satisfies the statutory fitness requirements. Before we issue a final decision on ValuJet's application for authority to resume operations, we are giving interested persons an opportunity to comment on our tentative findings.

Background

Pursuant to 49 U.S.C. 41101, any person wishing to provide interstate and overseas scheduled air transportation in the United States must obtain authority to do so from the Department of Transportation (Department). In granting that authority, the Department must find that the applicant is fit, willing, and able to perform such transportation, and will comply with the provisions of the Statute and the regulations and requirements of the Department. In carrying out its statutory duties, the Department's highest priority is safety, and the Department does everything possible to ensure that an applicant whose fitness is being determined will maintain the highest standards of safety after it is certificated.

ValuJet, a wholly owned subsidiary of ValuJet, Inc., with its headquarters in Atlanta, Georgia, holds a certificate of public convenience and necessity authorizing it to engage in interstate scheduled air transportation of persons, property and mail (see Order 93-10-43, issued October 26, 1993).

ValuJet began operations in 1993 offering no-frills, low fare flights in short-haul markets. It started with eight daily flights between Atlanta and Jacksonville, Orlando, and Tampa, using two DC-9 aircraft. By December 1993, the carrier had expanded its fleet to six aircraft and was offering flights to eight cities in the southeastern United States. Over the next few years, it expanded its operations even further--by December 1994, it was flying to 18 cities with 22 planes; by December 1995, it served 27 cities with 42 aircraft; and by March 1996, it was serving 29 cities with 47 aircraft. Throughout this time, ValuJet was profitable, posting some of the best operating results in the industry, and was one of the major low-fare airlines.

ValuJet encountered a number of operational and maintenance difficulties. It has had six accidents and 12 incidents,¹ and numerous instances in which the FAA investigated various alleged violations of the Federal Aviation Regulations (FARs), most of which involved operational, maintenance, or recordkeeping problems.² In February 1996, the FAA increased its oversight of the carrier by beginning a Special Emphasis Review of the airline, and required ValuJet to obtain prior FAA approval before adding any additional aircraft to its fleet or opening any new stations. On May 11, 1996, ValuJet Flight 592 crashed in the Florida Everglades, killing all 110 persons aboard. The National Transportation Safety Board (NTSB) continues to investigate the cause of this accident. Following the May 11 accident, the FAA accelerated and intensified its Special Emphasis Review through an intensive 30-day review of ValuJet and its aircraft fleet. This review led to a June 1996 Consent Order under which ValuJet agreed to suspend its operations and provide the FAA with information demonstrating its qualifications to hold FAA operating authority. Following ValuJet's cessation of service in June, it has worked to correct all of its safety-related problems. The FAA has advised us that it has determined that ValuJet is qualified and capable of exercising the privileges of the holder of a Part 121 air carrier operating certificate.

As a result of its June 1996 suspension of operations, ValuJet's certificate authority from the Department was automatically suspended, pursuant to the provisions of section 204.7 of our

¹ They range from the May 11, 1996, crash in the Florida Everglades to a January 10, 1995, accident in which a ValuJet aircraft collided with a tug during the push-back for taxiing at Memphis International Airport where there were no injuries. None of the 12 incidents, which include both operational and mechanical difficulties, resulted in injuries to passengers or crew.

² In all, a total of 125 cases were opened, of which all but 24 have now been closed. Of the closed cases, 34 were resolved with administrative actions (letters of correction or warning notices), 4 were closed with civil penalties totaling \$15,200, and the remainder were closed as part of a June 1996 Consent Order. Under the Consent Order, ValuJet agreed to pay the FAA a total of \$2 million to reimburse the FAA for expenses incurred in reviewing the carrier's operations. The remaining open cases involve issues related to the carrier's security practices or hazardous materials issues. The FAA has advised us that it intends to seek civil penalties in most of these cases.

regulations (14 CFR 204.7), pending a redetermination by the Department that the carrier was fit, willing, and able to resume certificated operations.

Summary of Pleadings

On July 15, ValuJet filed a notice in Docket OST-96-1548 stating that it intended to recommence operations and requesting an exemption from the 45-day advance notice provisions of section 204.7.³

On July 22, the Association of Flight Attendants (AFA), the union that represents ValuJet's approximately 600 flight attendants, filed an answer opposing ValuJet's application.⁴ Although the AFA does not oppose ValuJet's recertification, *per se*, it argues that the Department should not find ValuJet fit so long as the company's two senior executive officers, Robert Priddy (Chairman) and Lewis Jordan (President and Chief Operating Officer), remain with ValuJet on the grounds that they lack the managerial competence and compliance disposition to manage the company's operations safely.⁵ In support of that contention, the AFA notes that under those individuals' leadership numerous events occurred, including accidents and incidents that necessitated the FAA's increasing its surveillance of the carrier. The AFA cites a large number of Service Difficulty Reports (SDRs),⁶ unscheduled landings, and other deficiencies noted by the FAA in the company's operations and maintenance policies, practices and records, and reports by the National Transportation Safety Board (NTSB) and the Department of Defense (DOD) containing critical comments about the carrier. The AFA also notes that there are several shareholder suits pending against ValuJet claiming that certain ValuJet disclosures in Securities and Exchange Commission (SEC) reports amount to material misrepresentations in breach of securities laws, and that there is an on-going criminal investigation related to ValuJet's May 11, 1996, accident in the Florida Everglades.

³ Updated fitness information regarding the carrier's current management and key technical personnel, operating plans and financial condition, and compliance disposition was filed with the application, accompanied by a motion requesting confidential treatment under Rule 39 of our rules for certain of the fitness information being submitted. Subsequently, the company filed material supplementing its application. By letter dated August 15, the Department granted, in part, and denied, in part, ValuJet's confidentiality request.

⁴ On July 30, Wildlife-In-Need, Inc., and Raymond J. Moore, former holders of ValuJet stock, jointly filed an objection adopting the AFA's July 22 comments as their own.

⁵ The AFA asserts that, under Messrs. Priddy and Jordan, ValuJet (1) pursued a company strategy of uninterrupted and aggressive growth that outpaced the carrier's ability to comply with safety requirements, (2) pursued corporate policies that had a detrimental effect on the safety of the airline, (3) hired individuals who were not qualified to ensure the safe operation of the airline, and (4) did not address safety issues until they were raised by the FAA or other outside sources. The AFA also states that ValuJet's application was deficient relative to information pertaining to the company's compliance disposition.

⁶ Under the Federal Aviation Regulations (FARs), carriers are required to report certain items that relate to their operations or maintenance. Such reports are referred to as Service Difficulty Reports.

On August 5, ValuJet responded to the AFA's objection.⁷ ValuJet states that Messrs. Jordan and Priddy together have over 60 years of airline industry experience, including other senior management positions, are well regarded within the industry, and have a team of experienced managers to support them in overseeing the operations of ValuJet.

In a declaration filed as an attachment to ValuJet's answer, Lewis Jordan states that (1) throughout their careers in the airline industry, he and Mr. Priddy have always considered safety to be of paramount importance and that since founding ValuJet they have conveyed this attitude to others throughout the company, (2) ValuJet has taken many proactive steps to enhance safety, (3) it took steps to address matters raised by the accidents, incidents, or other safety problems faced by the carrier,⁸ (4) the number of SDRs cited by the AFA as evidence of ValuJet's noncompliance is actually evidence of a positive compliance disposition,⁹ (5) of the 24 examples cited by the AFA relative to maintenance problems at ValuJet, approximately one-third were the result of landing gear position indication systems and ValuJet was taking action to resolve these problems,¹⁰ (6) ValuJet took corrective action to address issues raised by the FAA in its special inspections, (7) although ValuJet was not approved for contract flight eligibility in the Department of Defense's (DOD) air carrier program in August 1995, it subsequently was approved in March 1996, (8) all of ValuJet's managers are qualified for their positions, (9) while ValuJet is cost-conscious, cost was never ValuJet's sole criterion for choosing contractors and all ValuJet contractors were certificated by the FAA as meeting all of its regulatory requirements, and (10) the AFA's motive in filing its objection is solely to increase its leverage in connection with on-going litigation between the carrier and the AFA.¹¹ ValuJet also notes that many of the AFA's own members have publicly disagreed with the union's position on ValuJet. In this regard, ValuJet refers to an open letter to the U.S.

⁷ Also on August 5, ValuJet filed an application in Docket OST-96-1619 requesting that the Department exempt it from section 201.5 of the Department's rules and allow it to advertise, take reservations, and sell tickets on its prospective services prior to obtaining effective authority from the Department. On August 8, the AFA opposed grant of such authority to ValuJet noting that it has not been the Department's policy to grant such waivers until a determination has been made about the carrier's fitness. We will handle this application at a later date. On August 19, 1996, ValuJet filed a Motion for Immediate Action requesting that the Department act favorably on its applications in Dockets OST-96-1548 and OST-96-1619 immediately so as to allow it to resume operations as soon as the FAA authorized it to. On August 20, the AFA filed an answer opposing ValuJet's motion.

⁸ Mr. Jordan states that pilot training and policies, in particular, were revised to address those situations involving off-the-runway/taxiway incidents. He further states that, prior to ValuJet's suspension, the FAA had noted that ValuJet had made significant improvements in its procedures.

⁹ Under the FARs, carriers are required to report to that agency certain occurrences related to their operations or maintenance. Mr. Jordan asserts that these SDRs are based on self-reporting by a carrier; thus, the more scrupulous and compliant an air carrier's management, the more SDRs it may have.

¹⁰ In this regard, ValuJet states that during the first quarter of 1996, it began an engineering evaluation of the problems with a working group that included engineers and maintenance personnel from Douglas Aircraft and Mobile Aerospace and developed a program to resolve the problems. ValuJet states that the remaining maintenance issues raised by AFA were of a nature similar to those experienced by other airlines and did not appear to be systemic.

¹¹ In October 1995, the AFA filed suit in federal court alleging that ValuJet had violated the Railway Labor Act by terminating the employment of between 20 and 40 flight attendants for engaging in protected union activities associated with the AFA's organizing drive.

Congress signed by 372 of ValuJet's approximately 600 flight attendants stating their belief that ValuJet was safe, as well as petitions signed by other ValuJet employees expressing their disagreement with the position espoused by the AFA and their confidence in the airline and Messrs. Priddy and Jordan.¹² ValuJet also questions whether the AFA's real purpose in opposing its resumption of operations is to benefit flight attendants it represents at other carriers. Finally, ValuJet states that, during its shutdown, it has cooperated fully with the FAA to assure that any future operations are conducted safely and in accordance with that agency's rules and regulations and that the Department should allow it to resume operations as soon as the FAA authorizes it to do so.

The AFA filed responses to ValuJet's August 5 pleading¹³ in which it denies that its objection is related to the lawsuit it has filed against the carrier and re-emphasizes the issues raised in its earlier objection. In addition, it cites problems experienced by Continental Air Lines during Mr. Jordan's tenure with that carrier as evidence of his lack of compliance disposition and managerial capabilities. The AFA requests that, at a minimum, in light of the problems experienced at ValuJet under Messrs. Priddy's and Jordan's management, a full evidentiary hearing be held by the Department to determine "the degree to which Messrs. Jordan and Priddy either intentionally encouraged, or negligently permitted, ValuJet to operate unsafely."

On August 15, ValuJet filed a Rejoinder¹⁴ stating that (1) it continues to believe that the AFA opposes its application because the union leadership has a contentious relationship with the airline, (2) the Department should not investigate issues already reviewed by the FAA, (3) the AFA's comments about Mr. Jordan's tenure at Continental are flawed and misleading, and (4) while the Department has taken cognizance of FAA matters in determining compliance disposition in other fitness cases, the Department has never denied certification to an airline because of the presence of an official who had consistently worked in harmony with the FAA.

Summary of Decision

We tentatively conclude, on the basis of the tentative findings below, that ValuJet (1) is a citizen of the United States and (2) is fit, willing, and able to resume providing the domestic scheduled air service proposed, subject to conditions. We will afford interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

¹² ValuJet also provided a statement by Arnold Barnett, a Professor of Operations Research/Statistics at the Sloan School of Management at the Massachusetts Institute of Technology, concluding that ". . . any comparison of current accident/incident statistics involving United States airlines must be recognized as a comparison among extremely safe airlines," and that current statistics do not indicate that a passenger was less safe flying ValuJet than any other airline. Mr. Barnett represents that he has compiled and studied aviation accident and safety statistics for approximately 20 years and has published articles on the subject.

¹³ AFA filings were received August 8, 13, 16, 21, 23, and 27. Some of these were accompanied by motions for leave to file otherwise unauthorized documents. We will accept into the record each filing.

¹⁴ ValuJet's filing was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

AFA contends that the issues in this case, at a minimum, require an oral evidentiary hearing. Based upon our review of the record, we tentatively conclude that there are no material issues of fact requiring an oral hearing or further procedures for their resolution. Neither Title 49 nor the Department's own regulations require an oral evidentiary hearing in proceedings to determine a carrier's fitness. To the contrary, the Department's regulations specifically contemplate that fitness proceedings will generally be decided on the basis of written submissions and we do so where there exist no disputed material issues of fact whose resolution requires a hearing. We see none in the record before us, which includes ValuJet's fitness information, AFA's voluminous objections which are primarily based on ValuJet's safety record and include substantial FAA documentation, and ValuJet's responses. A hearing is especially unnecessary in light of the information available to us as a result of the intensive review of ValuJet undertaken by the FAA. Accordingly, in the absence of a demonstration by AFA of the need to resolve factual issues material to this proceeding, we will redetermine ValuJet's fitness on the basis of the written record.

FITNESS

Under Subtitle VII of Title 49 of the United States Code, any company proposing to provide air transportation operations as an air carrier must first be found "fit, willing, and able," to conduct the services proposed. 49 U.S.C. 41101. The statute requires that the carrier remain fit in order to retain its authority. 49 U.S.C. 41110(e). Pursuant to 14 CFR 204.7, if a carrier ceases operations under the certificate authority awarded, it may not resume its operations until its fitness to do so has been redetermined by the Department.

When conducting a redetermination of a carrier's fitness under section 204.7, the Department applies the same three part-test that it uses to determine the fitness of new air carrier applicants. The three areas of inquiry that must be addressed in order to determine a company's fitness to resume operations are whether it (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to sufficient resources to recommence operations without posing an undue risk to consumers, and (3) will comply with the Statutes and regulations imposed by Federal and State agencies. We must also determine that the carrier remains a U.S. citizen.

Managerial Competence and Compliance Disposition

We have carefully examined the histories and organizational structure of ValuJet's management to ascertain whether individually and collectively they are competent and properly disposed to maintain safe operations in compliance with applicable laws and regulations.

ValuJet has a five-member Board of Directors. These individuals include the four founders of the company--Robert Priddy, Lewis Jordan, Timothy Flynn, and Maurice Gallagher, Jr.--and

Don Chapman, the CEO of Tug Manufacturing Company.¹⁵ Mr. Priddy is ValuJet's Chairman, Mr. Gallagher its Vice Chairman, and Mr. Jordan is the carrier's President and Chief Operating Officer.

Messrs. Priddy, Jordan, Flynn, and Gallagher have substantial histories of prior experience in the airline industry. Their qualifications were discussed in detail in Order 93-9-27, issued September 24, 1993.¹⁶ Mr. Chapman has held his position with Tug Manufacturing Company since 1977. In 1983, he founded Opti World, Inc., an optical store chain, and served as Chief Executive Officer of that company until 1995.

Prior to starting ValuJet, Mr. Priddy served as President of Florida Gulf Airlines, a division of Mesa Airlines, and also sat on that airline's Board of Directors (1991-1993). Prior to that, Mr. Priddy served for four years as President and Chief Executive Officer of Air Midwest. From 1979 through 1987, he was the Chief Financial Officer of Atlantic Southeast Airlines, an airline he helped found.

Lewis Jordan has over 30 years of aviation experience. Prior to his involvement with ValuJet, he held senior management positions with The Flying Tiger Line in the early 1980's and subsequently at Continental Air Lines. While at Continental, he served as Director, President and Chief Operating Officer (1991-1993), Executive Vice President and System General Manager (1990-1991), Executive Vice President and Chief Operating Officer (1986-1990), and Executive Vice President-Operations (1986).

In May 1996, ValuJet hired James B. Davis, a retired Air Force General, to conduct a safety audit of the carrier.¹⁷ During his Air Force career, General Davis served as Chief of Staff, Supreme Headquarters Allied Powers Europe (NATO), Commander, Pacific Air Forces, Commander, U.S. Forces-Japan, and Commander, U.S. Air Force Military Personnel Center.

In July 1996, ValuJet effected organizational changes intended to strengthen its maintenance controls by, among other actions, appointing James R. Jensen as Senior Vice President for Maintenance and Engineering. Mr. Jensen has more than 30 years of aviation industry experience and most recently served as Vice President of Product Support for Douglas Aircraft Company (1992-1996). From 1966-1992, he was with TWA in progressively more responsible positions and, at the time he left TWA, he was the Senior Vice President of Maintenance and Engineering.¹⁸ Reporting to Mr. Jensen will be the Vice President-Maintenance and the Vice President-Quality Assurance and Inspection. This organizational

¹⁵ Tug Manufacturing Company is a company that manufactures ground support equipment for the airline industry.

¹⁶ The background of Mr. Priddy and Mr. Jordan is discussed in this section. Mr. Gallagher and Mr. Flynn co-founded WestAir Holding, Inc., the parent company of West Air Commuter Airlines and NPA, Inc. and served in senior management positions with that company.

¹⁷ General Davis is a consultant to ValuJet.

¹⁸ Other positions he held with TWA include Vice President of Engineering and Quality Assurance, Director of Aircraft Engineering, Director of Powerplant Engineering, Director of Production Support, Manager of Engine and Component Scheduling, and Tooling and Equipment Engineer.

change is responsive to the FAA's concerns that ValuJet needed to enhance the quality assurance controls in its maintenance program.

Stephen Nevin has been the carrier's Senior Vice President-Finance and Chief Financial Officer since May 1994. Prior to that, he served as Vice President of the Aircraft Financing Group for McDonnell Douglas Finance Corporation (1982-1994). Other positions he has held include Western Regional Manager, Equipment Leasing for Integrated Resources, Inc., a real estate and equipment financing company (1981-1982); Senior Account Officer for Citicorp Industrial Credit (1977-1980); and District Sales Manager of Cessna Aircraft (1975-1977).

Thomas Kalil has been with ValuJet since May 1995 and is its Senior Vice President-Operations and Customer service.¹⁹ From 1987 to 1995, he was employed by Continental Air Lines where he served as: Senior Vice President, Airport Services (1994-1995), Senior Vice President, Customer Services (1990-1994), and Vice President, Station Operations (1987-1990). Between 1960 and 1987, he held customer service positions at Northwest Airlines, Republic Airlines, and Southern Airways.

Robert Zoller joined ValuJet in December 1995 as Vice President of Technical Operations and is currently the carrier's Vice President of Maintenance. Prior to that (1990-1995), he served as Vice President of Operations and Technical Services at American Eagle, Inc.²⁰ Other airline employment includes Wings West Airlines, Inc. (Vice President of Operations (1987-1990), and Pacific Southwest Airlines/USAir (1979-1987).²¹

Robert Toth is ValuJet's Vice President of Quality Assurance.²² From 1957 to 1994, Mr. Toth was employed by USAir, progressing from his initial position as a line mechanic to progressively more responsible positions, including Operations Director of Line Maintenance (1981-1989) and Vice President of Line Maintenance (1989-1994).²³ Mr. Toth holds an FAA Airframe and Powerplant Mechanic certificate.

David Gentry joined ValuJet in 1993 as Vice President-Maintenance, served as Vice President-Heavy Maintenance from December 1995 until August 1996, and currently serves as Vice President for Special Projects.²⁴ From 1966 through 1986, he was employed by Southern Airways and then Republic Airlines as a Mechanic/Welding (1966-1974), Lead Mechanic/Metal Finishing (1974-1976), and Section Manager and Senior Foreman/Metal Finishing Shop (1976-1985). From 1986-1993, he was employed at Northwest Airlines

¹⁹ Prior to July 1996, Mr. Kalil was Senior Vice President-Operations, Maintenance and Customer Service.

²⁰ According to his resume, in this position, he directed and coordinated the adoption of standardized operational policies and procedures for all American Eagle regional air carriers.

²¹ Positions he held include Manager Corporate Planning and Budgeting (1979-1981), Manager, Operations Planning and Control (1981-1983), Director, Dining Services (1985-1987), and Director of Flight Operations (1984-1987).

²² Mr. Toth also serves as ValuJet's Chief Inspector.

²³ Immediately prior to joining ValuJet, Mr. Toth had been working as an independent consultant.

²⁴ Mr. Gentry has no specific area of oversight responsibility. He reports directly to the Senior Vice President for Maintenance and Engineering.

where he held the following positions: Acting Director & Sr. Manager/Support Shops, Training Coordinator, and Hangar Systems Crew Chief. Mr. Gentry holds an FAA Airframe and Powerplant Mechanic certificate.

David Ulmer has been Vice President-Planning since March 1994. From October 1991 to March 1994, he was employed as an aviation consultant for Roberts, Roach & Associates, a transportation consulting firm. Other employment has included Assistant Manager, International Route Development at Delta Air Lines (1988-1991); Director of Pricing for Western Airlines (1986-1987); Director of Market Development and Economic Planning for Frontier Airlines (1979-1985); and assistant to the president of Hughes Airwest (1976-1979).

M. Ponder Harrison is ValuJet's Vice President for Sales and Marketing, a position he has held since 1993. Prior to joining ValuJet, Mr. Harrison had spent 10 years at Delta Air Lines in marketing-related positions.

Joan Auch joined ValuJet as a management consultant in August 1994, and became the carrier's Vice President of Inflight Services in November of that year. Ms. Auch began her aviation career in 1983 as a flight attendant for Continental Air Lines; when she left Continental in 1993, she was Director of Inflight Training.

ValuJet's Vice President of People is Louise Laughlin. Ms. Laughlin has been with ValuJet since 1993, serving first as Director of Reservations (1993-1994), then Vice President Customer Service (1994-1995) and has been in her current position since May 1995. Ms. Laughlin has previously held similar positions while employed at Northwest Airlines (1976-1987 and 1991-1993) and Eastern Airlines (1987-1991).²⁵

Andrew Gilbert Morgan, Jr. has been with ValuJet since 1993 and is its Vice President-Contracts. From 1980 through 1993, he was employed by Delta Air Lines in various positions including Regional Manager, Properties (1988-1993), Program Engineer (1985-1988), Senior Corporate Planning Analyst (1982-1984) and Aircraft Performance Engineer (1980-1982).

ValuJet's Director of Maintenance since August 1995 is Salvatore D'Amico. From 1986-1995, he was employed by Continental Air Lines in the following positions: Regional Director of Technical Operations (1990-1995), Administrator, Technical Services (1989), and Southeastern Regional Manager (1986-1988) and Maintenance Control Supervisor (1986). Other aviation positions he has held include Maintenance Manager for Emerald Airlines (1985-1986), Director of Maintenance for Northeastern International Airways (1983-1985), and Director of Maintenance for Nations Air (April-August 1995). Mr. D'Amico holds an FAA Airframe and Powerplant Mechanic certificate.

²⁵ Ms. Laughlin was Director of Reservations at Eastern in Atlanta from 1990 to 1991. Positions she held at Northwest include Director Reservations (1991-1993), Regional Manager, Reservations (Atlanta and Detroit) (1984-1987).

John Souders joined ValuJet as a DC-9 Captain in 1993, and has been Director of Operations since February 1996. Prior to that, he had served as Chief Pilot since November 1995. Before joining ValuJet, he was employed as a captain, first officer and flight engineer for Eastern Air Lines from 1972-1991.²⁶ Mr. Souders holds an FAA Airline Transport Pilot license.

Marshall Tilley serves as ValuJet's Chief Pilot. Like Mr. Souders, Mr. Tilley joined ValuJet in 1993 as a DC-9 captain. He assumed the responsibilities as the carrier's Chief Pilot in February 1996. He had been a pilot for Eastern Air Lines from 1972 to 1991. From 1966 until 1972, he was a U.S. Air Force pilot. Mr. Tilley holds an Airline Transport Pilot license and has approximately 14,000 flight hours.

The carrier's Director of Safety & Regulatory Compliance since August 1994 is Lloyd Prince, Jr. Prior to joining ValuJet, Mr. Prince was an officer in the United States Navy from 1982-1994 and served in such capacities as Safety Program Manager, FAA-18 Hornet in Norfolk Virginia (1992-1994), and Director of Safety, Operations, and Administration at Cecil Field, Florida (1990-1992).

We find that the background and experience of ValuJet's management team fully qualify them to oversee the carrier's operations.²⁷ All of these individuals have directly relevant prior experience in their respective areas of responsibility, and almost all have been with ValuJet for some time. Moreover, we found no record that any of these individuals have personally been cited for violations of the safety rules or of any other laws or regulations that might indicate a questionable compliance disposition.

ValuJet has taken, or is taking, a number of steps to strengthen its management and procedures relative to the safety of its operations.²⁸ In May of this year, it hired General Davis to conduct a full safety audit of the carrier and, in July, hired Mr. Jensen as Senior Vice President of Maintenance and Engineering to oversee other maintenance departments. The carrier subsequently established a Safety Department consisting of the Director of Safety and Regulatory Compliance (Mr. Prince) and other employees who will report directly to Mr. Jordan. It is also instituting a Safety Council to assure the rapid flow of relevant information to senior, middle and lower management on the company's Safety Program initiatives. The Safety Council thus provides a vehicle to highlight potential problem areas to those managers who have the authority to correct them before they become serious safety issues. The Council includes Mr. Jordan, the Senior Vice President for Maintenance and Engineering, the Senior

²⁶ From March 1991-September 1993, he served as NAMS Coordinator for the U.S. Environmental Protection Agency. In this position, he was in charge of 13 southeastern states' air networks and anti-pollution programs.

²⁷ ValuJet also provided the resumes for three other individuals holding senior staff positions. These individuals are Fred Troutman (Director of Purchasing and Stores), Todd Fohrman (Director of Maintenance Planning & Control), and Roger Wittenberg (Director of Engineering). Based on a review of their resumes, and conversations with the FAA, they appear to be satisfactory for their positions.

²⁸ In addition, the carrier has agreed to scale back its operations and work in concert with the FAA before expanding its operations beyond 15 aircraft.

Vice President for Operations, the Vice President-People, the Vice President-Inflight and other ValuJet personnel.

The AFA argues that Mr. Gentry was not qualified to serve as ValuJet's Vice President of Maintenance. As we noted earlier, Mr. Gentry's current position is Vice President for Special Projects which conveys no oversight responsibilities regarding maintenance. However, in response to the AFA's comments, we note that Mr. Gentry spent considerable time in maintenance-related positions prior to his employment with ValuJet and that, at the time of ValuJet's initial certification, the FAA determined that he met the qualifications for the FAA-required position of Director of Maintenance. Thus, we find no basis for the AFA's contention that he was unqualified.

The AFA asserts that Messrs. Jordan and Priddy lack the requisite managerial competence and compliance disposition to manage a certificated air carrier and that ValuJet is *per se* unfit so long as it is under their control. The AFA claims that (1) ValuJet has an unacceptable safety record that is the product of Messrs. Jordan's and Priddy's management style, policies and practices; (2) Messrs. Jordan's and Priddy's response to safety problems has been inadequate; and (3) Messrs. Jordan and Priddy should be held accountable.²⁹

In support of its arguments, the AFA cites virtually every safety-related matter in the carrier's history, including Service Difficulty Reports, unscheduled landings, accidents, incidents and FAA enforcement actions. The AFA also points to the fact that ValuJet was subject to special inspections by the FAA in 1994, 1995, and 1996, culminating in a June 1996 Consent Order between the FAA and ValuJet in which the FAA alleged various safety-related violations and the carrier agreed to cease operations until it had resolved all FAA concerns about the safety of its operations.³⁰ The AFA also cites several Department decisions in other cases in support of its contention that Messrs. Jordan and Priddy, as managers of ValuJet, should be held accountable for ValuJet's safety record and that the carrier cannot therefore be found fit under their control.

ValuJet argues that once the FAA finds an air carrier to be in compliance with the agency's air carrier certification and operating rules, the Department should not second guess that finding in its fitness determination. Thus, ValuJet would have us accept the FAA's determinations as being dispositive with respect to Messrs. Priddy's and Jordan's compliance disposition and competence to manage the carrier. ValuJet misreads the statute and our case

²⁹ The AFA also asserts in its July 22, 1996, objection that ValuJet's application is improper because it fails to include all data required by the Department's regulations to find a carrier fit. We find that ValuJet has submitted all information that is necessary for the Department to render a determination of its fitness. The AFA's August 27 filing takes issue with the number of changes that have taken place in ValuJet's management structure and the fact that two new positions remain vacant. We do not believe that these matters in any way reflect a lack of compliance disposition or managerial capability on the part of ValuJet's management as asserted by the AFA. In our view, these changes and new positions primarily reflect a positive carrier response to safety issues.

³⁰ As noted earlier, upon this cessation of its operations, ValuJet's certificate authority granted by the Department was automatically suspended pending a redetermination of its fitness.

precedent in this regard. We are required to pass on the managerial capability and compliance disposition of persons in positions such as those held by Messrs. Jordan and Priddy before a carrier can be found fit to operate.

In cases such as the Application of Ryan Air Service, Inc., Order 88-6-6, Application of Yute Air Alaska, Inc., Order 91-1-24, and ATX, Inc., Fitness Investigation, Order 94-4-8, we have used our independent authority to review managerial capability and compliance disposition to preclude individuals from specific involvement with applicants or air carriers. In doing so, we gave great weight to the individuals' experience in responding to the FAA's requirements, and thus to the FAA's views. In other cases, we found individuals unqualified even though the FAA had no concerns about them. These kinds of situations are understandable since the FAA concentrates its review on the capabilities of individuals having the most direct control of the air carrier's maintenance and aircraft operations. Our review concentrates on the abilities of a wider range of individuals, including, for example, those persons with significant consumer protection and financial responsibilities. Moreover, our standards specifically deal with compliance disposition issues in a much broader and detailed context than the FAA's. With this as background, it is clear that we have the authority to review--and must independently determine--the managerial capability and compliance disposition of Messrs. Priddy and Jordan.

This said, we cannot ignore the FAA's findings that ValuJet meets the regulatory requirements to hold an air carrier certificate. Moreover, in light of the AFA's concentration on safety concerns in its challenge to Messrs. Priddy and Jordan, we must rely to a great extent on the views of the FAA staff who have dealt directly with those individuals, and the key officials they hired, with respect to their capabilities and willingness to comply with our rules. This is especially important in this proceeding since the AFA has provided no direct evidence that Messrs. Priddy or Jordan lack those qualities. The FAA is therefore a particularly meaningful source of information on how those safety problems may relate to Messrs. Jordan and Priddy and how they have reacted to ensure that such problems do not recur. The Department has never refused to certificate a carrier because of the involvement of an individual whose compliance disposition or managerial capabilities are questioned solely in relation to safety issues unless the FAA has agreed with our conclusions.³¹

The FAA's June 1996 Consent Order indicates that ValuJet had conducted airworthiness and aircraft maintenance related activities, and flight operations contrary to and in violation of the Federal Aviation Regulations. However, the AFA has not shown, and the record does not show, that Messrs. Jordan and Priddy intentionally encouraged or negligently permitted ValuJet to operate in an unsafe manner, as has been raised by the AFA. Messrs. Jordan and Priddy have not individually been found to have violated FAA rules or to have encouraged other carrier employees to do so. Significantly, the FAA has not asked for their removal from the company. In fact, the FAA has advised us that Messrs. Jordan and Priddy and other ValuJet management have demonstrated satisfactory progress in addressing and managing the requirements of the consent order and FAA regulatory requirements.

³¹ We are also unaware of the former Civil Aeronautics Board ever making such a decision.

Indeed, none of the information that we have received from the FAA indicates that the safety-related problems at ValuJet were directly attributable to Messrs. Jordan and Priddy. Of course, those problems occurred while they were in control of ValuJet and they therefore share responsibility for the carrier's problems. However, it is important to point out that the evidence in the record indicates that ValuJet itself discovered and voluntarily disclosed many of the problems that it has now fixed and took proactive steps in fixing those problems. Moreover, the airline's management has implemented systems that should substantially enhance protections against these problems recurring in the future.

The FAA has advised us that there are numerous documents within the company, as well as between the company and the FAA, that indicate an on-going degree of regulatory compliance effort on ValuJet's part. Noteworthy according to the FAA is the fact that ValuJet participated fully in the self-disclosure program. The FAA also has advised us that ValuJet has cooperated with it to solve the safety-related problems at ValuJet.³² Further, the FAA advises that ValuJet has now complied with all the requirements set forth in the consent agreement and that it knows of no reason why the Department should act unfavorably on the carrier's request to resume operations. It appears, in fact, that ValuJet has made positive changes on its own initiative without having been specifically required by the FAA to do so.

The AFA argues, however, that the corporate environment created by Messrs. Jordan and Priddy "exalted sustained growth and maximum profitability over safety,"³³ and that such a policy is not consistent with the managerial competence and compliance disposition needed by a carrier's top management.³⁴ In this case, it is not evident that Messrs. Priddy and Jordan intentionally pursued policies detrimental to safety. That is not to say that ValuJet's rapid expansion or other policy decisions did not contribute to the operational problems experienced by the carrier. ValuJet itself acknowledges in hindsight that there were things it could have done to insure that its infrastructure was better equipped to handle its growth. However, there is no evidence in the record that, in expanding ValuJet's services, Messrs. Priddy and Jordan intentionally disregarded safety or failed to establish what they believed to be policies designed to insure the carrier's safety and compliance with the FARs.³⁵

³² The AFA cites an August 23, 1996, article published in the *Cleveland Plain Dealer* that refers to ValuJet's having "misled FAA about jet reinspections" in July 1996. The AFA asserts that that occurrence is indicative that ValuJet has not been able to cure the problems that led to its cessation of operations. ValuJet responded on August 26 that the occurrence was a result of a miscommunication between ValuJet representatives and was not a willful attempt to mislead the FAA. The FAA corroborated ValuJet's explanation, and noted that ValuJet's subsequent attention to enhancing internal controls has responded effectively toward eliminating any recurrence of such problems.

³³ See AFA July 22 objection, at p. 18.

³⁴ See ATX Fitness Investigation, Order 94-4-8, at page 17.

³⁵ The AFA relies heavily on our decision in ATX for the proposition that, under the control of Messrs. Jordan and Priddy, ValuJet should not be found fit. The AFA's reliance on ATX for that conclusion is misplaced. The difficulties experienced by ValuJet are not nearly as long-standing nor as pervasive and uncorrected as those at issue in the ATX case. Unlike the case at hand, in the ATX case, we noted, among other things, that problems at a carrier formerly under the control of the ATX principal whose managerial competence and compliance disposition were at issue, were long-standing, got worse over time, and resulted in criminal indictments of

(Footnote continued)

While ValuJet acknowledges being cost-conscious, it denies the AFA's contention that cost factors alone were considered when making decisions relative to hiring service providers. Indeed, the AFA has provided no verifiable evidence that demonstrates that ValuJet knowingly hired unqualified training or maintenance providers. To the contrary, the FAA notes that the maintenance and training contractors engaged by ValuJet were appropriately certificated or otherwise authorized to conduct the work contracted for. The AFA also alludes to a February 29, 1996, letter to ValuJet from the FAA wherein that agency questioned whether the carrier's organizational culture may be adversely impacting ValuJet's ability to operate safely. Specifically, these practices included ValuJet's policy of paying pilots on a "per segment" basis, and its policy of having 25-minute turnarounds between flights. According to ValuJet, it has made revisions in its pay policies, and the 25-minute turnarounds were only scheduled for a limited number of its flights.³⁶ More importantly, however, the FAA has advised that, on March 5, 1996, it received a letter from ValuJet responding to the concerns raised in its February 29 letter indicating the actions the carrier had already taken, or would take, to improve its operations and stated that it found that ValuJet had acceptably addressed the concerns the FAA had raised.

With respect to the AFA's charges relative to Mr. Jordan's tenure at Continental, we note that the Department conducted two thorough reviews of Continental for the period during which he was with the carrier and found no information indicating that he was lacking in either his managerial capabilities or his compliance disposition.³⁷ Moreover, we received no evidence during ValuJet's initial fitness proceeding that raised any questions about Mr. Jordan's actions while at Continental.

We are aware of no other issues involving Messrs. Jordan and Priddy at this time that could lead us to conclude that they are not competent or compliant officials of the company. We have been advised by our Office of Airline Information that ValuJet has filed required financial and traffic reports with the Department in a timely fashion. We have also been

various carrier managers and maintenance employees. Order 94-4-8. In addition, the principal involved in the ATX case was found incompetent by a Federal court and removed from the management of the carrier formerly under his control. *Id.*, at 34-36. Moreover and significantly, we found in ATX that there was no evidence to suggest that the ATX principal whose conduct was at issue had changed his method of operation that we found objectionable, which gave us no reason to expect a more positive disposition to comply with our processes and regulations. *Id.*, at 8. In contrast, ValuJet's problems spanned a relatively short period of time and, unlike the ATX case, there is no evidence of willful negligence on Messrs. Priddy's and Jordan's part. Further, as noted above, Messrs. Jordan and Priddy have acted positively on the concerns raised about ValuJet's safety, including having taken steps to correct management oversight of deficiencies at ValuJet.

³⁶ Moreover, ValuJet notes that others in the industry routinely require 25-minute turnarounds for many of their flights.

³⁷ Preliminary Investigation of Texas Air Corporation, Docket 45581, and ATX Fitness Investigation, Order 94-4-8. Indeed, in the ATX case, the Department specifically found that most of problems at Continental were traceable to another individual. *Id.*, at 7, 11, and 36-48.

advised by our Aviation Consumer Protection Division that it has no information that indicates that ValuJet's consumer practices are cause for concern.³⁸

ValuJet is currently a party to on-going litigation with the AFA³⁹ and several shareholder lawsuits alleging that the carrier made misleading public statements relative to its business in violation of SEC rules, and there is currently at least one criminal investigation involving the carrier concerning the oxygen canisters carried on the aircraft involved in the May 11 accident. The company has also been sued by families of the victims of the May 11 accident.

With respect to the AFA lawsuit, ValuJet states that it does not believe that it wrongfully terminated any employee and that, in January 1996, the court struck AFA's demands for jury trial, punitive damages, and attorneys' fees; the only remaining justiciable issues are reinstatement and back pay. ValuJet denies the allegations contained in the shareholder lawsuits and states its intention to defend itself vigorously against the charges. The cause of the May 11 accident is currently under investigation by the NTSB. We have no information at this time that would lead us to question ValuJet's compliance disposition in connection with that accident. Thus, there is no information here that leads us to question the compliance disposition of ValuJet or Messrs. Priddy or Jordan on these issues at this time.

We will, however, require ValuJet to provide copies of any future findings against it in connection with the AFA lawsuit and its shareholder suits. In addition, we will require the carrier to advise us if any criminal investigation results in charges against the carrier and to provide us a copy of any findings by the NTSB relative to the May 11 accident.

In light of all of the above, we tentatively conclude that there is no reason to require the removal of Messrs. Priddy and Jordan at this time and that ValuJet's management team has the managerial expertise and technical skills necessary, as well as the proper compliance disposition needed to oversee its future operations.

We reiterate, however, that our tentative conclusions on ValuJet's compliance disposition and managerial capability to assure the highest levels of safety are materially influenced by its very positive cooperation with the FAA in dealing effectively with its history of problems. A critical element of the proposed resumption of service is the scaled back level of operations, limited for now to a 15-aircraft fleet. Any future expansion of its fleet and markets will be

³⁸ In this regard, we are advised that ValuJet, like some other carriers, sends its personnel to meet with the Department's consumer staff on a regular basis to discuss any complaints that we have received. In addition, by Order 96-4-47, issued April 26, 1996, ValuJet was assessed a \$20,000 civil penalty by the Department in connection with violations of 14 CFR 399.84 and 49 U.S.C. 41712 by (1) failing to specifically state the dollar amounts of the Passenger Facility Charges and (2) failing to disclose peak/off-peak travel restrictions applicable to advertised fares in advertisements that it published or caused to be published in the *Washington Post* newspaper on or about January 31, 1996, and February 2, 1996. Virtually all large U.S. passenger carriers have had price advertising problems.

³⁹ In October 1995, the AFA filed suit in federal court alleging that ValuJet had violated the Railway Labor Act by terminating the employment of between 20 and 40 flight attendants for engaging in protected union activities associated with the AFA's organizing drive.

subject to intensive oversight and approvals by the FAA prior to its implementation. Moreover, we will require ValuJet to advise us in advance of any plans to expand its operations beyond the initial 15 aircraft approved by the FAA. This will allow us to monitor the company's expansion for any impact it may have on ValuJet's managerial capabilities or compliance disposition or, as discussed below, its financial condition.

Financial Position

According to ValuJet's March 31, 1996, 10-K report, at that date it was operating 47 aircraft and providing 286 daily flights serving Atlanta and 27 other cities. Shortly after its May 11 accident, ValuJet substantially curtailed its flight operations while the FAA was inspecting its fleet. At the time of its cessation, the carrier was operating approximately 20 aircraft. After resumption of operations, ValuJet plans to serve approximately 16 cities using 15 aircraft.⁴⁰

The carrier provided copies of its parent's December 31, 1995, 10-K report, March 31 and June 30, 1996, 10-Q reports filed with the Securities and Exchange Commission, as well as an unaudited balance sheet at May 31, 1996. These financial reports show that ValuJet has generally been profitable since it began operations in October 1993. For the calendar year ended December 31, 1995, the carrier experienced operating and net incomes of \$107.7 million and \$67.7 million, respectively, on \$367.7 million in revenues. For the six months ending June 30, 1996, it experienced an operating loss of approximately \$8.7 million and net income of \$1.1 million on approximately \$191 million in revenues.⁴¹ The carrier's June 30, 1996, balance sheet shows that at that date it had \$207 million cash-on-hand, \$185 million in working capital, a current assets to current liabilities ratio of 2.7 to 1, total assets of \$521.5 million, and retained earnings and stockholders' equity of \$88.6 million and \$165.4 million, respectively.

In assessing a company's financial ability to resume operations, the Department typically requires a carrier that has not provided operations for an extended period of time to demonstrate that it has sufficient resources available to it to cover all of the interim-period costs associated with resuming operations as well as a reserve equal to three months' operating expenses. ValuJet has provided forecasts of the expenses that it expects to incur as a result of its shutdown, as well as a forecast of its income and expenses for the 15 aircraft operation to which it is initially limited. Our review of ValuJet's forecasts and current financial condition found that the company continues to have available to it funds sufficient to allow it to recommence operations at the level proposed without undue risk to consumers.⁴²

⁴⁰ This includes 12 aircraft to be used in its revenue flights and three spare aircraft. The fleet size conforms to the consent order ValuJet entered into with the FAA which limits the carrier's aircraft fleet initially to no more than 15 aircraft.

⁴¹ The three months ended June 30, 1996, reflected the company's first unprofitable quarter since it commenced operations. During that quarter, ValuJet incurred operating and net losses of \$26.2 million and \$9.5 million, respectively, on revenues of approximately \$81 million. The carrier attributes these losses to the May 11 accident, attendant publicity, and the subsequent cessation of operations.

⁴² On August 23, ValuJet provided under confidential motion a preliminary unaudited balance sheet for the carrier at July 31, 1996, and a cash flow statement for the period July 1-August 16, 1996. As noted in the

(Footnote continued)

CITIZENSHIP

49 U.S.C. 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section specifies that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

ValuJet has provided an affidavit stating that it is a citizen of the United States as defined in the statute. ValuJet and its parent, ValuJet, Inc., are both companies incorporated in the State of Nevada. The following individuals, all of whom are U.S. citizens, hold five percent or more of the company's stock: Robert Priddy (11.8%), Maurice Gallagher, Jr. (10.9%), Lewis Jordan (9.4%), and Timothy Flynn (8.2%). ValuJet states that the remaining stock is publicly held and that, to its knowledge, total non-U.S. citizen ownership of its stock is less than 25 percent.⁴³ All of the company's officers and directors are U.S. citizens. Finally, there is no information in the record that would lead us to conclude that ValuJet is controlled by non-U.S. citizens.

In view of the foregoing, we tentatively conclude that ValuJet is a U.S. citizen and that it is fit, willing, and able to resume air transportation operations.

REQUESTS FOR CONFIDENTIAL TREATMENT

On July 15, ValuJet filed a motion requesting confidential treatment for certain information provided in support of its fitness. By letter dated, August 15, the Department granted, in part, and denied, in part, ValuJet's motion. On August 26, ValuJet filed a petition for reconsideration of the Department's decision relative to certain of the information for which confidential treatment was denied.⁴⁴ At the same time, the AFA filed a petition for reconsideration of our decision with respect to information for which we had previously granted confidential treatment. In addition, on August 20 and 23, ValuJet filed additional financial information for which it has also requested confidential treatment. We will deal with all of these issues in a later order.

OBJECTIONS

REQUESTS FOR CONFIDENTIAL TREATMENT section below, we will rule on the carrier's request for confidential treatment of this material at a later date. However, we find that the information in these statements indicates that ValuJet continues to have adequate financial resources to resume its air transportation operations.

⁴³ ValuJet states that the only registered owners with listed foreign addresses hold a total of 909 shares of its parent company's outstanding voting stock.

⁴⁴ At the same time, ValuJet filed in the public docket those documents which the Department had denied confidential treatment that were not the subject of the carrier's petition for reconsideration.

We will give interested persons seven (7) calendar days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within four (4) calendar days thereafter. We expect such persons to direct their objections, if any, to the applications and points at issue and to support such objections with detailed economic analyses.⁴⁵ We will not entertain general, vague, or unsupported objections. If no substantial objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to the fitness of ValuJet to resume its air transportation operations, and will resissue the carrier's certificate with an exact copy of the attached specimen Terms, Conditions, and Limitations.

We are allowing less time than usual for objections and answers in this proceeding since the prompt issuance of a final ruling on ValuJet's fitness appears to be in the public interest. The carrier has now received full approval from the FAA to resume operations under its Part 121 certificate, but it may not do so until we determine that it meets the statutory fitness requirement. The carrier has incurred large expenses in complying with the FAA's investigation and recommendations for improved safety procedures and in preparing to resume operations. Unduly delaying a final decision on the carrier's fitness would unreasonably increase its costs. At the same time, the procedural dates set by this order should not prejudice the AFA or Wildlife-in-Need and Mr. Moore, which have already had an opportunity to file extensive comments. In addition, the Congressional hearings on ValuJet and the FAA investigations have created an extensive public record on ValuJet's operational and safety procedures which has already been available to persons concerned with ValuJet's plan to resume operations.

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions stated above and authorize ValuJet Airlines, Inc., to resume its air transportation operations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings and conclusions set forth here to file such objections with the Documentary Services Division, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, in Docket OST-96-1548 and serve them upon all persons listed in Attachment A no later than seven (7) calendar days after the service date of this order; answers to objections shall be filed no later than four (4) calendar days thereafter.

⁴⁵ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*see* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We grant the motions for leave to file submitted in this proceeding by ValuJet Airlines, Inc., and the Association of Flight Attendants.
6. We dismiss the Motion Requesting Immediate Action filed by ValuJet Airlines, Inc., on August 19, 1996.
7. We will serve a copy of this order on the persons listed in Attachment A.
8. We will publish a notice of this order in the Federal Register.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Attachment A

SERVICE LIST FOR VALUJET AIRLINES, INC.

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